

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals  
for the Second Circuit, held at the Daniel Patrick Moynihan  
United States Courthouse, 500 Pearl Street, in the City of  
New York, on the 29th day of October, two thousand seven.

PRESENT:

HON. JON O. NEWMAN,  
HON. JOSÉ A. CABRANES,  
Circuit Judges.<sup>1</sup>

LIAN RU WANG,  
Petitioner,

v.

PETER D. KEISLER,

06-1829-ag  
NAC

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<sup>1</sup>Judge Debra Ann Livingston, originally a member of this panel, recused herself from this case. Accordingly, the case is decided by the remaining panel members, who are in agreement, in accordance with §0.14(b) of the rules of this Court.

1 **ACTING U.S. ATTORNEY GENERAL,<sup>2</sup>**  
2 **Respondent.**  
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4 **FOR PETITIONER:** **Lian Ru Wang, pro se, New York, New**  
5 **York.**  
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7 **FOR RESPONDENT:** **David N. Kelley, United States**  
8 **Attorney, Southern District of New**  
9 **York; Jim M. Greenlee, United States**  
10 **Attorney; John E. Gough, Jr.,**  
11 **Assistant United States Attorney,**  
12 **Northern District of Mississippi,**  
13 **Oxford, Mississippi.**  
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15 UPON DUE CONSIDERATION of this petition for review of a  
16 Board of Immigration Appeals ("BIA") decision, it is hereby  
17 ORDERED, ADJUDGED, AND DECREED that the petition for review  
18 is DENIED, in part, and DISMISSED, in part.

19 Petitioner Lian Ru Wang, a native and citizen of the  
20 People's Republic of China, seeks review of a March 20, 2006  
21 order of the BIA affirming the April 19, 2004 decision of  
22 Immigration Judge ("IJ") Paul A. Defonzo denying Wang's  
23 applications for asylum, withholding of removal, and relief  
24 under the Convention Against Torture ("CAT"). In re Lian Ru  
25 Wang, No. A 95 161 166 (B.I.A. Mar. 20, 2006), aff'g No. A  
26 95 161 166 (Immig. Ct. N.Y. City Apr. 19, 2004). We assume  
27 the parties' familiarity with the underlying facts and

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<sup>2</sup>Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Acting Attorney General Peter D. Keisler is automatically substituted for former Attorney General Alberto R. Gonzales as a respondent in this case.

1 procedural history in this case.

2 When the BIA adopts the decision of the IJ and  
3 supplements the IJ's decision, this Court reviews the  
4 decision of the IJ as supplemented by the BIA. See Yan Chen  
5 v. Gonzales, 417 F.3d 268, 271 (2d Cir. 2005). This Court  
6 reviews the agency's factual findings under the substantial  
7 evidence standard, treating them as "conclusive unless any  
8 reasonable adjudicator would be compelled to conclude to the  
9 contrary." 8 U.S.C. § 1252(b)(4)(B); see, e.g., Zhou Yun  
10 Zhang v. INS, 386 F.3d 66, 73 & n.7 (2d Cir. 2004),  
11 overruled in part on other grounds by Shi Liang Lin v. U.S.  
12 Dep't of Justice, 494 F.3d 296, 305 (2d Cir. 2007) (en banc).  
13 However, we will vacate and remand for new findings if the  
14 agency's reasoning or its fact-finding process was  
15 sufficiently flawed. Cao He Lin v. U.S. Dep't of Justice,  
16 428 F.3d 391, 406 (2d Cir. 2005); see also Xiao Ji Chen v.  
17 U.S. Dep't of Justice, 471 F.3d 315, 339-40 (2d Cir. 2006)  
18 (agreeing with this principle, but avoiding remand, in spite  
19 of deficiencies in an adverse credibility determination,  
20 because it could be confidently predicted that the IJ would  
21 adhere to the decision were the case remanded).

22 In Shi Liang Lin, the Court concluded that the

1 statutory scheme under IIRIRA § 601(a) "unambiguously  
2 dictates that applicants can become candidates for asylum  
3 relief only based on persecution that they themselves have  
4 suffered or must suffer." 494 F.3d at 308. Thus, Wang was  
5 not entitled to asylum based solely on his wife's alleged  
6 forced abortion, regardless of their marital status. Id.  
7 Moreover, Wang does not allege, nor is there any indication  
8 in the record, that he was persecuted for his own resistance  
9 to a coercive population control program. 8 U.S.C. §  
10 1101(a)(42)(B).

11 Even if Wang had refused to pay the fine out of  
12 opposition to China's birth control policy and that act was  
13 considered an attempt to "interfere with enforcement of  
14 government policy," he failed to establish that any  
15 consequences of his actions rose or would rise to the level  
16 of persecution. See Matter of S-L-L-, 24 I. & N. Dec. at  
17 10; see also Matter of T-Z-, 24 I. & N. Dec. 163, 169 (BIA  
18 2007); Ivanishvili v. U.S. Dep't of Justice, 433 F.3d 332,  
19 341 (2d Cir. 2006) (holding that to constitute persecution,  
20 the harm must rise above "mere harassment"). Further, Wang  
21 has not argued or alleged any facts indicating that he  
22 suffered or fears persecution on any other basis. See Shi

1     Liang Lin, 494 F.3d at 307-08 (“For an asylum applicant who  
2     does not fall within th[e] limited exception [of INA §  
3     610(a)], the burden remains on the applicant – and the  
4     opportunity remains open – to demonstrate, in light of the  
5     particular facts of the case, that he has (i) a well-founded  
6     fear of personal persecution (ii) based on political opinion  
7     or some other impermissible ground.”). As such, the agency  
8     properly dismissed Wang’s appeal. Thus, we need not reach  
9     the agency’s adverse credibility finding. Cf. Xiao Ji Chen,  
10    471 F.3d at 339-40 (avoiding remand where it can be  
11    “confidently predicted” that the agency would reach the same  
12    conclusion, absent any error).

13           Because Wang was unable to show the objective  
14    likelihood of persecution needed to make out an asylum  
15    claim, he was necessarily unable to meet the higher standard  
16    required to succeed on his claim for withholding of removal,  
17    to the extent that it rested on the same factual predicate.  
18    See Paul v. Gonzales, 444 F.3d 148, 156 (2d Cir. 2006).  
19    Lastly, because Wang failed to challenge in his brief to the  
20    BIA the IJ’s denial of his request for relief under the CAT,  
21    we lack jurisdiction to review any such arguments. 8 U.S.C.  
22    § 1252(d)(1); see also Karaj v. Gonzales, 462 F.3d 113, 119

1 (2d Cir. 2006) (citing Beharry v. Ashcroft, 329 F.3d 51, 59  
2 (2d Cir. 2003)).

3 For the foregoing reasons, the petition for review is  
4 DENIED, in part, and DISMISSED, in part. As we have  
5 completed our review, any stay of removal that the Court  
6 previously granted in this petition is VACATED, and any  
7 pending motion for a stay of removal in this petition is  
8 DISMISSED as moot. Any pending request for oral argument in  
9 this petition is DENIED in accordance with Federal Rule of  
10 Appellate Procedure 34(a)(2), and Second Circuit Local Rule  
11 34(d)(1).

12 FOR THE COURT:  
13 Catherine O'Hagan Wolfe, Clerk  
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15 By: \_\_\_\_\_  
16  
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